



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DGR:DAS/BDM:TRP/SMF
F. #2016R00467

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June 17, 2024

By ECF

The Honorable James R. Cho
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: In re Forfeiture Order of Tim Leissner
Miscellaneous Docket No. 23-1505 (MKB) (JRC)

Dear Judge Cho:

Pursuant to the Court's Order entered on June 3, 2024, the government respectfully submits this joint letter on behalf of petitioners Russell Simmons, Kimora Lee Simmons-Leissner ("Ms. Lee"), Ken Siazon and Roger Ng to provide the Court with a status of discovery in the above-referenced criminal forfeiture ancillary proceeding.

As Your Honor is aware, Chief Judge Margo K. Brodie directed the Parties to engage in discovery limited to the threshold question of whether Petitioner Russell Simmons held, as of the date of the filing of his third-party petition, a membership interest in Nu Horizons Investment Group, LLC sufficient to confer standing upon him to assert a derivative claim on behalf of the corporate entity. See Memorandum & Order (the "Order"), Dkt. #32, at 9-10.

Since the parties' last appearance before Your Honor on June 3, 2024, the parties have been working to comply with Judge Brodie's discovery order and resolve discovery disputes.

The parties and third-party Cooley LLP law firm ("Cooley") conferred regarding the production of potentially privileged documents in the possession of Cooley and Ms. Lee, and on June 5, 2024, submitted for the Court's review and approval, a proposed attorney's-eyes only Supplement to the Protective Order governing the production of documents by Cooley.¹

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The initial Protective Order in this matter was entered on April 23, 2024.

On June 7, 2024, the Court approved and entered the Supplement to the Protective Order. On June 10, 2024, Cooley made a document production to the parties' attorneys pursuant to the Supplement to the Protective Order. Ms. Lee made another document production pursuant to the Supplement to Protective Order on June 17, 2024.

The government issued third-party subpoenas for documents and deposition testimony to two individuals that the government believes possess relevant information regarding the threshold question of Simmons's membership interest in Nu Horizons. These individuals include Simmons' former business associate (Rich Slomovitz, whose deposition been noticed for June 27, 2024) and a corporate attorney for All Def Digital (Cooley LLP attorney Dave Young, whose deposition has been noticed for June 20, 2024). The government has also attempted to schedule a deposition of Petitioner Simmons, and the government is awaiting Simmons' dates of availability during the week of July 8, 2024.

Further, the government has transmitted a Mutual Legal Assistance Treaty request to Italy to facilitate service of the subpoena seeking deposition testimony of a former business associate of Simmons, as authorized by the Court by Order entered on May 20, 2024. See Order for Issuance of Subpoena Under 28 U.S.C. §1783, Dkt. #56.

The government made a document production to the parties on June 11, 2024 which, together with the documents previously produced by the government, consists of approximately 7,653 pages. The government also responded to Petitioner Simmons' requests related to the government's document production, including: agreeing to expand the dates of the government's search of its database as to one of Simmons' document requests (Request 8(b)), to which the government previously agreed to produce responsive documents; advising that the government is still in the process of searching for documents potentially responsive to Simmons' request related to Tim Leisner's appearance bond; and providing hit counts for the search terms set forth in the government's discovery letter filed on May 17, 2024 (Dkt. #52).

The government is advised by counsel for Petitioner Simmons that they are continuing to discuss narrow categories of documents that Simmons has requested from Petitioner Lee, including in a letter that he sent to Ms. Lee on June 17, 2024.

Finally, on June 12, 2024, the Court adopted Petitioners Simmons and Ms. Lee's proposed briefing schedule for Simmons' motion to dismiss Ms. Lee's petition, as follows:

Simmons shall serve his motion on or before July 8, 2024; Ms. Lee shall serve her response on before August 5, 2024; and Simmons shall serve his reply, if any, on or before August 19, 2024.

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

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